REPORT

OF

THE COMMITTEE ON THE JUDICIARY,

Relative to the construction to be given to the act of September 20, 1850, so far as it relates to the Mileage of Senators from California.

MARCH 10, 1851.

Submitted and ordered to be printed.

Mr. COOPER made the following Report:

The Committee on the Judiciary, to whom was referred the resolution of the Senate directing the said committee to inquire and report whether the act of Congress of the 20th of September, 1850, so far as the same relates to the mileage of the Senators from California, is permanent or temporary in its provisions,

REPORT:

That they have carefully considered the provisions of the aforesaid act, and are of opinion that so much of the same as provides "that the mileage of the Senators and Representatives from California, and the Delegate from Oregon, be computed and paid, according to the most usual travelling route within the limits of the United States," is permanent; and that the mileage of the Senators from the State of California, should be ascertained and paid in pursuance of this provision.

IN SENATE OF THE UNITED STATES,
March 8, 1851.

On motion of Mr. HUNTER,

Resolved, That the President of the Senate, having stated to the Senate a question as to the true construction of the act of the 20th September, 1850, in relation to the mileage of the Senators from California:

Ordered, That it be referred to the Judiciary Committee, to inquire and report whether the said act so far as relates to the mileage of the Senators of California is permanent or temporary in its provisions.

(Attest,) ASBURY DICKENS,
Secretary.

FROM THE HON. WILLIAM M. GWIN, IN RELATION TO HIS MILEAGE.

Submitted to the President of the Senate *pro tempore*.
ASBURY DICKENS, *Secretary of the Senate.*

SENATE CHAMBER, March —— 1851.

ASBURY DICKENS, Esq.,
Secretary of the Senate.

SIR:—In my letter to you of the 30th September last, in relation to my mileage as a Senator, I stated the distance, in conformity with the provision of the act of 20th September, 1850, to be five thousand and ten miles coming, and the same returning. That act, however, being only a temporary one, and operative only upon the then session, no longer applies to the subject; and I now request you to state my mileage at six thousand eight hundred and fifty-three miles from my place of residence in California, to Washington, and the same returning, in conformity with the act of 22d January, 1818. This is strictly in accordance with the unanimous decision of the committee on mileage of the House of Representatives, in fixing the mileage of the Representative from my State, at the session just expired. A copy of that decision is appended.

WM. M. GWIN.

WASHINGTON, D. C., February 27, 1851.

To the Members and Senators from California.

GENTLEMEN:—I have received your letter of yesterday, requesting my opinion as regards the mileage to which you are entitled by existing laws, for the last and present session of Congress. As to the last session, I think mileage is regulated by the proviso to the first section of the act of 20th September, 1850, page seventy-two, entitled "An act to supply a deficiency in the appropriation for pay and mileage of members of Congress for the present session."

The appropriating clause as well as the title, apply only during "*the present session*," (1849–50.) To that clause, providing for your mileage *at that* session, is appended a proviso, limiting the charge under *that appropriation*, to a computation according to "the most usual travelling route within the limits of the United States." I feel, therefore, constrained to say, that your mileage, in my judgment, at the last session, must be governed by that proviso.

As to your mileage at this session, until otherwise provided by law, I think it is governed by the act of January 22, 1818, (3 Stat. at Large, 404.) That act fixes the mileage and per diem of members of Congress by a permanent law applying in all time to come, until repealed or modified hereafter, in relation to old as well as new members, and so universally construed. It is entitled "An act allowing compensation to the members of the Senate, members of the House of Representatives of the United States, and to the delegates of the Territories, and repealing all other laws on that subject."

It is provided in the first section of this act, "That at every session of Congress, and every meeting of the Senate in the recess of Congress, after the third day of March, one thousand eight hundred and seventeen, each Senator shall be entitled to receive eight dollars for every day he has attended or shall attend the Senate, and shall also be allowed eight dollars for every twenty miles of estimated distance, by the most usual road from his place of residence to the seat of Congress, at the commencement and end of every such session and meeting; and that all sums for travel already performed, to be due and payable at the time of passing this act."

It must be conceded that your mileage *at this session*, is governed by this act, unless the proviso before quoted should be ruled to apply. In my judgment that proviso has no application beyond the session of 1849-50, for the following reasons:

The proviso is attached to "the act to supply a deficiency in the appropriation for pay and mileage of members of Congress for the *present session*." The first section of that act are in these words:

"That the sum of one hundred and sixty thousand dollars be, and the same is hereby appropriated out of any money in the Treasury not otherwise appropriated, for the payment of mileage and per diem of Senators, members of the House of Representatives and delegates in Congress at the present session; two thousand three hundred and thirty dollars for additional expense for stationary for members of the House of Representatives during the present session; *Provided*, That the mileage of the Senators and Representatives from California and the delegate from Oregon, be computed according to the most usual travelling route within the limits of the United States; and the per diem of said Senators and Representatives for this session, shall commence for the day on which the Constitution of California was first communicated to the two houses of Congress respectively."

It will be perceived, that the operation of the law is limited in the body of the act as well as in the title to "*the present session*." The act then being confined in its very terms to the *last session*, the *proviso* to that act can only have an operation in point of time co-extensive with that of the law itself. This is the general and well established rule in the construction of statutes, that if the operation of an act is limited therein to a specified period, a proviso to that act must have a similar limitation, unless it is otherwise expressly declared in the proviso.

This general rule of construction applies still more strongly to the annual appropriation laws of Congress, and with irresistible force to all annual appropriations for deficiencies. If, however, any doubt could remain as regards this question, it must be removed, on reference to the decision of the Supreme court of the United States, in the case of Minis *versus* the United States, (15 Peters, 423.)

In that case, the question was, whether a proviso to an annual appropriation bill of Congress was permanent in its operation, or expired with the termination of the year for which the appropriation was made. It was the unanimous opinion of the court that the effect of the proviso was temporary, and commensurate only as to time with the operation of the law.

The views of the court on this point are given at pages 445–6–7, and would seem to be conclusive. The court say "the argument on behalf "of the United States is, that this proviso although found in a mere appro- "priation law of a limited nature, is to be construed by reason of the words

"'or for any other service or duty whatsoever unless authorized by law,'" to be permanent in its operation, and applicable to all future appropriations, where officers of the army are employed in such service or duty; and that it appears from the record, that this was the very ground on which the Treasury Department rejected the claim of Doctor Minis for commissions. The same question has been made and fully argued in the case of Gratiot *vs.* the United States, at the present term, and we have given it our deliberate consideration. We are of opinion that such is not the true interpretation of the terms of the proviso; and that it is limited exclusively to appropriations made at the session of eighteen hundred and thirty-five.

"It would be somewhat unusual to find engrafted upon an act making "special and temporary appropriations, any provision which was to have "a general and permanent application to all future appropriations. Nor "ought such an intention on the part of the legislature to be presumed, "unless it is expressed in the most clear and positive terms, and where "the language admits of no other reasonable interpretation. The office "of a proviso generally, is either to except something from the enacting "clause or to qualify or restrain its generality, or to exclude some pos-"sible ground of misinterpretation of it, as to extending to cases not in-"tended by the legislature to be brought within its purview. A "general rule, applicable to all future cases, would most naturally be "expected to find its proper place in some distinct and independent en-"actment."

Indeed, that was a much stronger case than this, for in that case, the words used in the proviso might have been construed to give it a permanent operation. There are no such words in this proviso. On the contrary, the words "*during the present session*," immediately precede the proviso, and are directly connected with it, and to construe this proviso as permanent, is to violate the express language and manifest intention of the law and the settled rules of construction.

In conclusion, I entertain no doubt, that if the question were before the Supreme court of the United States, it would be decided unanimously by that tribunal, upon the principles adopted by them in the case of Minis before quoted, that the effect of this proviso was temporary and limited by the operation of the act to which it was appended, and that as regards all future sessions of Congress, the mileage of the Members and Senators from California must be governed by the act of 22d January, 1818, until otherwise provided by law.

Very respectfully,
Your obedient servant,
(Signed) R. J. WALKER.

OFFICE OF THE SERGEANT-AT-ARMS,
House of Representatives, March 3, 1851.

I certify that the Committee on Mileage of the House of Representatives have unanimously reported as follows, in reference to the mileage of the members from the State of California:

"There having been no special provision regulating the mileage of the

"representatives from California, for this (second session thirty-first Con-
"gress,) the committee are constrained to allow their mileage in con-
"formity with the law of January 22, 1818. I accordingly so direct.
"The 'most usually travelled road,' appearing to be by Panama, their
"mileage will be computed by that route.

"(Signed) GRAHAM N. FITCH,
MARCH 3, 1851. "*Chairman Committee on Mileage.*"

In conformity with the above report, the following amounts have been allowed and paid:

To Hon. G. W. Wright, (Stockton,) 7,013 miles.
To Hon. Edward Gilbert, (San Francisco,) 6,853 miles.

A. J. GLOSSBRENNER,
Sergeant-at-Arms House of Representatives, U. S.